

CORRECTION OFFICERS CERTIFICATION COMMISSION (COCC) MEETING

Date: July 25, 2005

Time: 10:00 A.M. to 3:00 P. M.

Location: DOC Training Academy, Rooms C

AGENDA TOPICS:	PERSON RESPONSIBLE:
<ul style="list-style-type: none">• Call meeting to order• Pledge of allegiance• Introduction of Commission• Introduction of staff• Introduction of attendees• Public comments• Housekeeping• Recap of last meeting• Feedback from SOS and JCAR on rules• Review of Memo from legal on rule making• Review of DOC policies pertaining to certification• JTA recommendation?• Grandfathering requirement• What is next?	<p>Micki Knowles Attendees Commissioners Staff Attendees Chris Egbert Chris Egbert Chris Egbert Chris Egbert Chris Egbert Commissioners Commissioners Commissioners</p>

OUTCOME:

If this were a successful meeting it would result in ... (what?)

1. A decision on policy vs. rules
2. Decision on Grandfathering
3. A decision on whether the JTA should be a requirement of certification

KEY POINTS:

Micki Knowles opened the meeting at 10:00 a.m. Commissioners in attendance were David Topash, Walter Foster, Sam Shipman and Danny Patterson. Bo Morrow with the DOC Compliance Unit was also in attendance. Planning Section staffs in attendance were Chris Egbert and Peggy Huddleston

RECAP OF LAST MEETING

Chris Egbert reviewed the last meeting with the Commissioners. It was acknowledged that Director Crawford had appointed Mickey Knowles as the chairperson for the COCC.

FEEDBACK FROM SOS AND JCAR ON RULES

Chris Egbert reported to the COCC that he had been in contact with the Secretary of State's Office and The Joint Committee on Administrative Rules and both indicated that there did not seem to be a problem with filing the certification requirements as rules even though they don't effect anyone except DOD staff.

REVIEW OF MEMO FROM LEGAL ON RULE MAKING

Chris Egbert advised the COCC that the Director and Deputy Director have requested the certification requirements be made part of the departmental policy and procedures based on the advice from Daniel Gibson, DOC General Counsel, regarding the filing administrative rules versus adopting DOC policy, which stated:

Section 217.040, RSMo authorizes the department to promulgate administrative rules that are "necessary or desirable to carry out the provisions of [chapter 217]." The statute that creates the COCC is § 217.105. Therefore, you have rulemaking authority to "carry out" the provisions of the certification law. It does not follow, though, that you *must* promulgate formal rules. *Artman v. State Bd. of Registration for the Healing Arts*, 918 S.W.2d 247 (Mo. banc 1996).

Administrative rules are promulgated pursuant to chapter 536. Section 536.010(4) defines "rule" as follows: "Rule means each agency statement of general applicability that implements, interprets or prescribes law or policy or that describes the organization, procedure or practice requirements of an agency."

Missouri courts have often addressed a complaint that an agency action was invalid because the agency adopted some policy or practice without complying with the rulemaking process. The supreme court has held that a rule is not required unless the agency action has a potential of impacting the substantive or procedural rights of some member of the public. *Mo. Soybean Assoc'n v. Missouri Clean Water Commission*, 102 S.W.3d 10 (Mo. banc 2003) *quoting Baugus v. Dir. of Revenue*, 878 S.W.2d 39 (Mo. banc 1994).

As you know, House Bill 353, which the governor has signed into law, amended § 217.105 by removing references to jailers and private jails from the statute. The commission now has authority to make "recommendations to the department ... concerning the qualifications, training, testing, and certification of corrections officers". Section 217.105.10 authorizes you to "establish various classes of corrections officers certification." The term "corrections officer" is not limited to DOC employees, though, because § 217.105.1(2) defines it as a "corrections officer of the state or any political subdivision of the state." However, it is my understanding that the COCC's focus will be limited to corrections officers employed by the DOC.

Based on the foregoing, I offer the following conclusion and recommendation. *Certification of corrections officers will not impact the substantive or procedural rights of any member of the public.* Therefore, this action will qualify for one of the express statutory exemptions contained in the definition of rule. Certification will be a "statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public". § 536.010(4)(a); *see also* § 217.040.2. Consequently, there is *no legal requirement* that the department promulgate administrative rules to establish classes of certification. Because the

rulemaking process is quite cumbersome and time-consuming, I recommend that you implement the certification process by department procedures rather than by administrative rules. Please contact me if you want further evaluation of this matter.

David Topash made a motion to make the certification requirements part of DOC policies and procedures.

Sam Shipman second the motion.

The Commissions voted on the motion:

Micki Knowles – yes

David Topash – yes

Walter Foster – no

Sam Shipman – yes

Danny Patterson – yes

The motion passed.

REVIEW OF DOC POLICIES PERTAINING TO CERTIFICATION

Chris Egbert presented the COCC a report that identified whether the certification requirements were currently in DOC policies and procedures or they needed to be developed.

The Commissioners determined that the rank of CO I through Captain should be included in this policy.

Bo Morrow was requested to be present at this meeting to assist with the development of policy and procedure for certification. Bo Morrow reviewed the components of the policy with the Commissioners. The following item need more clarification:

- What kind of certificate is issued for completion of home schooling?

All reference to certification requirements not pertaining to DOC staff were to be removed from the draft procedure presented by Bo Morrow.

Bo Morrow will be redrafting the procedure.

Grandfathering of current staff

The Commissioners discussed the issue of grandfathering in current employees.

Walter Foster made a motion to use similar wording for the peace officers to grandfathering in current CO I staff.

Peace Officers, continually holding a commission as a full-time peace officer since December 31, 1978, are not required to be licensed.

David Topash seconded the motion.

The motion passed unanimously.

Bo Morrow will draft a version of this grandfathering.

JTA RECOMMENDATION

The COCC was asked to review the DOC Job Task Analysis at the last meeting. The COCC has a short discussion and the following was the result:

Walter Foster made a motion that to be certified all new hires must have met the requirements of the JTA.

Danny Patterson and Sam Shipman second the motion.

The motion passed unanimously.

Other

The COCC will be taking up the issue of levels of certification at the next meeting. The COCC asked the Planning Section staff to research the topic of Career Development programs and present their findings at the next meeting.

The meeting adjourned at 1:15 p.m.

COMMISSION MEMBERS NOT ATTENDING:
--

All commissioners were in attendance

ACTION ITEMS	RESPONSIBLE	DEADLINE
Develop meeting minutes	Peggy Huddleston	07-25-05
Present a report on Career Development	Chris Egbert	09-08-05
Re-draft certification procedure	Bo Morrow	09-08-05

NEXT MEETING:

Date: September 8, 2005

Time: 10:00 A.M. to 3:00 P.M.

Location: DOC Training Academy, Room 1A